

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA**

IN RE:	)	
	)	CASE NO. 19-80064 (TLS)
SPECIALTY RETAIL SHOPS	)	
HOLDING CORP., <i>et al.</i> <sup>1</sup>	)	
	)	CHAPTER 11
Debtor.	)	

**SERTA SIMMONS BEDDING, LLC’S**  
**MOTION TO ALLOW LATE FILED CLAIM**

COMES NOW, Serta Simmons Bedding, LLC, also known as Serta, Inc. (“Serta”) a creditor in the above-referenced bankruptcy matter, and for its Motion to Allow Late Filed Claim (the “Motion”), shows this Court the follow:

1. On January 16, 2019 (the “Petition Date”), the Debtor filed a voluntary petition under Chapter 11 of the Bankruptcy Code. [Doc 1].

2. Serta is a creditor of Shopko Stores Operating Co., LLC (“Shopko”) pursuant to those certain invoices for goods provided to Shopko by Serta (“Invoices”). Attached hereto as **Exhibit “A”** is a true and correct copy of a summary of the Invoices.

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Specialty Retail Shops Holding Corp. (0029); Pamida Stores Operating Co., LLC (6157); Pamida Transportation, LLC (4219); Penn-Daniels, LLC (0040); Place’s Associates’ Expansion, LLC (7526); Retained R/E SPE, LLC (6679); Shopko Finance, LLC (1152); Shopko Gift Card Co., LLC (2161); ShopKo Holding Company, LLC (0171); ShopKo Institutional Care Services Co., LLC (7112); ShopKo Optical Manufacturing, LLC (6346); ShopKo Properties, LLC (0865); ShopKo Stores Operating Co., LLC (6109); SVS Trucking, LLC (0592)(collectively referred to herein as the “Debtor”).



3. On February 5, 2019, the proof of claim bar date order was entered (the “POC DDL Notice”) setting a bar date to file proof of claim of March 18, 2019 (the “POC DDL”). [Docket No. 10].

4. Because the POC DDL Notice was not served on Serta, Serta did not have notice of the proof of claim deadline.

5. Section 502(b)(9) provides that, “a proof of claim is not timely filed, except to the extent tardily filed as permitted under paragraphs (1), (2) or (3) of Section 726(a) of this title . . .” (emphasis added) 11 U.S.C. § 502(b)(9). Claims which are tardily filed because a creditor did not have notice or actual knowledge of a case in time for timely filing of a proof of claim are allowed under § 726. 11 U.S.C. § 726 (2)(C)(Tardily filed claims are allowed under § 501(a) of this title, if ...“(i) the creditor that holds such claim did not have notice or actual knowledge of the case in time for timely filing of a proof of such claim under § 501(a) of this title; and (ii) proof of such claim is filed in time to permit payment of such claim.”).

6. Bankruptcy Rule 3003(c)(3) provides that the court may extend the time within which proofs of claim may be filed. B.R. 9006(b)(1) provides that if the period of time has expired, a party must show that the failure to act was the result of excusable neglect. The primary factor in determining whether excusable neglect has occurred regarding the enlarging of the bar date is whether the creditor was given adequate notice to file a timely proof of claim. In re Thompson McKinnon Securities



Inc., 130 B.R. 717, 719-20 (Bankr. S.D.N.Y. 191)(reasoning known creditors, were entitled to actual notice which may entitle them to an extension of the bar date to file a proof of claim). “Proceedings within the ambit of the Bankruptcy Code are no less susceptible to the requirements of due process than in any other realm . . . One such fundamental due process right is a creditor’s right to notice of the bar date for filing a proof of claim.” In re Collier, 307, B.R. 20, 25 (Bankr. D. Mass. 2004). The Supreme Court has repeatedly established that notice must be “reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections” in order to satisfy due process. Id. citing Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950).

7. Further, at a minimum, Serta’s failure, if any, to timely file a Proof of Claim occurred as a result of “excusable neglect” and, therefore, Serta should be allowed to file its claim and such claim should be considered “timely-filed” and allowed. See F.R.B.P. 9006(b); In re Thompson McKinnon Securities Inc. supra at 719 (reasoning excusable neglect was established because creditor was classified as a known creditor and therefore was entitled to actual notice).

8. As set forth on the Proof of Claim attached hereto as **Exhibit B**, SCB has a claim against Debtor pursuant to the Invoices. See Exhibit A.



9. WHEREFORE, based on all of the above, SCB respectfully requests that its Proof of Claim filed contemporaneously herewith be considered timely-filed and allowed in the amount set forth thereon.

This 26th day of April, 2019.

Respectfully submitted,  
**ROGERS LAW OFFICES**  
By/s/Beth E. Rogers  
Beth E. Rogers,  
Georgia Bar No. 612092  
100 Peachtree Street, Ste. 1950  
Atlanta, Georgia 30303  
770-685-6320 phone  
678-990-9959 fax  
brogers@berlawoffice.com  
*Attorney for Serta*



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEBRASKA**

IN RE:	)	
	)	CASE NO. 19-80064 (TLS)
SPECIALTY RETAIL SHOPS	)	
HOLDING CORP., <i>et al.</i> <sup>2</sup>	)	
	)	CHAPTER 11
Debtor.	)	

**CERTIFICATE OF SERVICE**

This is to certify that I have this day served the within and foregoing **SERTA SIMMONS BEDDING, LLC'S MOTION TO ALLOW LATE FILED CLAIM** by the electronic case filing system and/or by depositing a true and correct copy of the same in the United States Mail, postage prepaid, addressed as follows:

United States Trustee Jerry.L.Jensen@usdoj.gov

James J. Niemeier, jniemeier@mcgrathnorth.com  
Michael T. Eversden, meversden@mcgrathnorth.com  
Lauren R. Goodman, lgoodman@mcgrathnorth.com  
*Counsel for Debtors*

This 26th day of April, 2019.

/s/Beth E. Rogers  
Beth E. Rogers  
Georgia Bar No. 612092  
*Attorney for Creditor*

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<sup>2</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Specialty Retail Shops Holding Corp. (0029); Pamida Stores Operating Co., LLC (6157); Pamida Transportation, LLC (4219); Penn-Daniels, LLC (0040); Place's Associates' Expansion, LLC (7526); Retained R/E SPE, LLC (6679); Shopko Finance, LLC (1152); Shopko Gift Card Co., LLC (2161); ShopKo Holding Company, LLC (0171); ShopKo Institutional Care Services Co., LLC (7112); ShopKo Optical Manufacturing, LLC (6346); ShopKo Properties, LLC (0865); ShopKo Stores Operating Co., LLC (6109); SVS Trucking, LLC (0592)(collectively referred to herein as the "Debtor").





Simmons Bedding Company  
One Concourse Parkway, Suite 800  
Atlanta, GA 30328  
770-512-7700

Remit To: Serta INC  
PO Box 945655  
Atlanta GA 30394-5655

Customer 557934

Statement Date: 04/09/19

Payment Terms : CBD

SHOPKO STORES OPERATING \*\*\*CH 11\*\*\*  
700 PILGRIM WAY  
GREEN BAY, WI 54304  
United States

Last Paid: 03/26/2019

Last Paid Amount: 0.00

Attention: Jacqueline Smith

Invoice Number	Type	Invoice Date	Due Date	Your Reference	Invoice Amt	Balance	Due Days
06647498-001	Sale	05/17/2018	07/16/2018	017969590C	32,508.00	32,508.00	267
06647499-001	Sale	05/17/2018	07/16/2018	017969591B	26,316.00	26,316.00	267
07037036-001	Sale	08/29/2018	10/28/2018	018366226A	7,740.00	7,740.00	163
07061491-001	Sale	09/14/2018	11/13/2018	018384732A	6,192.00	6,192.00	147
07090582-001	Sale	09/14/2018	11/13/2018	018406416A	3,096.00	3,096.00	147
07090581-001	Sale	09/17/2018	11/16/2018	018406415B	3,096.00	3,096.00	144
07107297-001	Sale	09/24/2018	11/23/2018	018426747C	3,096.00	3,096.00	137
07124574-001	Sale	09/27/2018	11/26/2018	018447897A	1,548.00	606.78	134
07172642-001	Sale	10/10/2018	12/09/2018	018491247C	1,548.00	1,548.00	121
07172643-001	Sale	10/10/2018	12/09/2018	018491248B	1,548.00	1,548.00	121
07172644-001	Sale	10/10/2018	12/09/2018	018491249A	3,096.00	3,096.00	121
07192662-001	Sale	10/18/2018	12/17/2018	018512175C	6,192.00	6,192.00	113
07192663-001	Sale	10/18/2018	12/17/2018	018512176B	3,096.00	3,096.00	113
07192664-001	Sale	10/18/2018	12/17/2018	018512177A	9,288.00	9,288.00	113
07210010-001	Sale	10/25/2018	12/24/2018	018531619B	3,096.00	3,096.00	106
07210011-001	Sale	10/26/2018	12/25/2018	018531620A	1,548.00	1,548.00	105
07229955-001	Sale	10/31/2018	12/30/2018	018550674C	1,548.00	1,548.00	100
07229956-001	Sale	10/31/2018	12/30/2018	018550675B	1,548.00	1,548.00	100
07229957-001	Sale	10/31/2018	12/30/2018	018550676A	3,096.00	3,096.00	100
07210009-001	Sale	11/02/2018	01/01/2019	018531618C	3,096.00	3,096.00	98
07248701-001	Sale	11/12/2018	01/11/2019	018570612A	6,192.00	6,192.00	88

AGED AMOUNTS

	1-30 Days	31-60 Days	61-90 Days	91 > Days	
Current	Past Due	Past Due	Past Due	Past Due	TOTAL DUE
			6,192.00	121,350.78	<b>127,542.78</b>



**Fill in this information to identify the case:**

Debtor 1 Specialty Retail Shops Holding Corp.  
Debtor 2 \_\_\_\_\_  
(Spouse, if filing)  
United States Bankruptcy Court District of Nebraska  
Case number: 19-80064

FILED  
U.S. Bankruptcy Court  
District of Nebraska  
4/26/2019  
Diane Zech, Clerk

**Official Form 410  
Proof of Claim**

Exhibit B

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

**Part 1: Identify the Claim**

<b>1. Who is the current creditor?</b>	<u>Serta Simmons Bedding, LLC</u> Name of the current creditor (the person or entity to be paid for this claim)  Other names the creditor used with the debtor <u>Serta, Inc.</u>	
<b>2. Has this claim been acquired from someone else?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
<b>3. Where should notices and payments to the creditor be sent?</b>  Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	<b>Where should notices to the creditor be sent?</b> <u>Serta Simmons Bedding, LLC</u> Name c/o Beth E. Rogers 100 Peachtree Street, Suite 1950 Atlanta, GA 30303-3030  Contact phone <u>770-685-6320</u> Contact email <u>brogers@berlawoffice.com</u>  Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	<b>Where should payments to the creditor be sent? (if different)</b> _____ Name _____ Contact phone _____ Contact email _____
<b>4. Does this claim amend one already filed?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
<b>5. Do you know if anyone else has filed a proof of claim for this claim?</b>	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	



6. Do you have any number you use to identify the debtor?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: <u>7934</u>
7. How much is the claim?	\$ <u>127542.38</u> <b>Does this amount include interest or other charges?</b> <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).
8. What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as healthcare information. <u>goods sold</u>
9. Is all or part of the claim secured?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. The claim is secured by a lien on property. <b>Nature of property:</b> <input type="checkbox"/> Real estate. If the claim is secured by the debtor's principal residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: _____  <b>Basis for perfection:</b> _____  Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  <b>Value of property:</b> \$ _____ <b>Amount of the claim that is secured:</b> \$ _____ <b>Amount of the claim that is unsecured:</b> \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.)  <b>Amount necessary to cure any default as of the date of the petition:</b> \$ _____ <b>Annual Interest Rate</b> (when case was filed) _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable
10. Is this claim based on a lease?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ _____
11. Is this claim subject to a right of setoff?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____



## Document Page 9 of 10

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Check all that apply:	Amount entitled to priority
A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.	<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
	<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
	<input type="checkbox"/> Wages, salaries, or commissions (up to \$12,850*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
	<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
	<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
	<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies	\$ _____
* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.		

## Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157 and 3571.

Check the appropriate box:

- ☒ I am the creditor.  
☐ I am the creditor's attorney or authorized agent.  
☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.  
☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this Proof of Claim serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this Proof of Claim and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 4/26/2019  
MM / DD / YYYY

/s/ Randal Brian Wingate \_\_\_\_\_

Signature

Print the name of the person who is completing and signing this claim:

Name	Randal Brian Wingate		
	First name	Middle name	Last name
Title	Manager of Credit Services and Accounts Receivable		
Company	Serta Simmons Bedding, LLC		
Address	Identify the corporate servicer as the company if the authorized agent is a servicer		
	2451 Industry Avenue		
	Number Street		
	Doraville, GA 30360		
	City	State	ZIP Code
Contact phone	404-534-5246		Email bwingate@sertasimmons.com





Simmons Bedding Company  
 One Concourse Parkway, Suite 800  
 Atlanta, GA 30328  
 770-512-7700

Remit To: Serta INC  
 PO Box 945655  
 Atlanta GA 30394-5655

Customer 557934

Statement Date: 04/09/19  
 Payment Terms : CBD

SHOPKO STORES OPERATING \*\*\*CH 11\*\*\*  
 700 PILGRIM WAY  
 GREEN BAY, WI 54304  
 United States

Last Paid: 03/26/2019  
 Last Paid Amount: 0.00

Attention: Jacqueline Smith

Invoice Number	Type	Invoice Date	Due Date	Your Reference	Invoice Amt	Balance Due	Days
06647498-001	Sale	05/17/2018	07/16/2018	017969590C	32,508.00	32,508.00	267
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07229956-001	Sale	10/31/2018	12/30/2018	018550675B	1,548.00	1,548.00	100
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Current	1-30 Days	31-60 Days	61-90 Days	91 > Days	TOTAL DUE
	Past Due	Past Due	Past Due	Past Due	
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